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11 Attorneys for Plaintiffs HERBALIFE
INTERNATIONAL OF AMERICA,
12 INC. and HERBALIFE
INTERNATIONAL, INC.
13

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

16 HERBALIFE INTERNATIONAL
17 OF AMERICA, INC., a Nevada
18 corporation, and HERBALIFE
19 INTERNATIONAL, INC. a Nevada
corporation,

20 Plaintiffs,
21

22 v.
23

24 ALYSON McGARITY, an individual
doing business as “mikenalyson27”
25 on the website www.ebay.com, and
DOES 1-10,
26

27 Defendants.
28

Case No: 2:18-cv-5455

**COMPLAINT FOR DAMAGES,
INJUNCTIVE, AND OTHER
RELIEF FOR VIOLATION OF 15
U.S.C § 1114; 15 U.S.C. § 1125(a); 15
U.S.C. § 1125(c); TORTIOUS
INTERFERENCE AND RELATED
CLAIMS**

DEMAND FOR JURY TRIAL

1 Plaintiffs Herbalife International of America, Inc. and Herbalife
2 International, Inc. (collectively, "Plaintiffs") bring this action against Defendant
3 Alyson McGarity ("McGarity") (d/b/a "mikenalyson27" on the website
4 www.ebay.com ("eBay")) and John Does 1-10 ("Doe Defendants") (collectively,
5 "Defendants") for trademark infringement in violation of the Lanham Act, 15
6 U.S.C. § 1114; false advertising in violation of 15 U.S.C. § 1125(a)(1)(B); unfair
7 competition in violation of 15 U.S.C. § 1125(a); trademark dilution in violation of
8 15 U.S.C. § 1125(c); common law trademark infringement; unfair competition in
9 violation of Cal. Bus. and Prof. Code § 17200; and tortious interference with
10 contracts and business relationships. These claims arise from Defendants'
11 misappropriation of Plaintiffs' trademarks in connection with Defendants'
12 unlawful and unauthorized sale of materially different and non-genuine Herbalife
13 products on the Internet to unwitting customers. In support of their complaint,
14 Plaintiffs allege as follows:

15 **PARTIES**

16 1. Herbalife International of America, Inc. ("Herbalife") is a Nevada
17 corporation with its principal place of business in Los Angeles, California.

18 2. Herbalife International, Inc. ("Herbalife International") is a Nevada
19 corporation with its principal place of business in Los Angeles, California.

20 3. McGarity is an individual who, on information and belief, resides at
21 16205 NE 32nd Street, Vancouver, Washington 98682-3674 and may be served
22 with process there or anywhere else she may be found.

23 4. The true names, involvement, and capacities, whether individual,
24 corporate, associated or otherwise, of Doe Defendants 1 through 10 are unknown
25 to Plaintiffs. Therefore, Plaintiffs sue these defendants by a fictitious name.
26 Plaintiffs are informed and believe, and on that basis allege, that the Doe
27 Defendants include persons and entities assisting or acting in concert with
28 McGarity in connection with the actions complained of herein and include persons

1 and entities that are responsible in some manner for the events and occurrences
2 referred to herein or are otherwise interested in the outcome of this dispute. When
3 the true names, involvement, and capacities of these parties are ascertained,
4 Plaintiffs will seek leave to amend this Complaint accordingly.

5 **JURISDICTION**

6 5. This Court has jurisdiction over this matter pursuant to 28 U.S.C.
7 §§1331 and 1338 and 28 U.S.C. § 1367. Plaintiffs' federal claims are predicated
8 on 15 U.S.C. § 1114 and 15 U.S.C. § 1125(a) and (c), and Plaintiffs' claims arising
9 under the laws of the State of California are substantially related such that they
10 form part of the same case or controversy under Article III of the United States
11 Constitution.

12 6. This Court has personal jurisdiction because the Defendants
13 purposefully availed themselves of the privilege of conducting activities and
14 causing a consequence in the State of California by, among other things,
15 advertising and selling infringing products to consumers within California through
16 one or more highly interactive commercial websites. The eBay storefront through
17 which the Defendants have sold and are selling infringing products shows feedback
18 from more than 41,000 eBay users who purchased products from the storefront,
19 rendering it highly likely that Defendants shipped infringing products into
20 California.

21 7. This Court also has personal jurisdiction because Defendant McGarity
22 previously entered into a contract with for the purpose of becoming an Independent
23 Herbalife Distributor. Under the contract, which was subsequently terminated,
24 McGarity agreed to submit to the jurisdiction of state and federal courts in
25 California.

26 8. This Court also has personal jurisdiction over Defendants because
27 they are intentionally engaging in infringing activities with the intent of causing
28 injury to Herbalife, which they know is located in California.

1 **VENUE**

2 9. Venue is proper in this judicial district pursuant to 28 U.S.C.
3 § 1391(b) because a substantial part of the events or omissions giving rise to
4 Plaintiffs' claims occurred within this judicial district or, in the alternative, because
5 a Defendant is subject to personal jurisdiction in this district.

6 **FACTUAL ALLEGATIONS**

7 **Plaintiffs and Their Trademarks**

8 10. Herbalife is a direct selling company that provides nutrition, weight-
9 management, energy and fitness, and personal care products (hereinafter,
10 "Herbalife products") in more than 90 countries around the world, including the
11 United States.

12 11. Herbalife products are available to United States consumers
13 exclusively through Herbalife Independent Herbalife Distributors ("Herbalife
14 Distributors" or "Distributors"), who are independent contractors authorized and
15 trained by Herbalife to market and sell Herbalife products.

16 12. Plaintiffs devote a significant amount of time, energy, and resources
17 to protecting the value of their brands, products, name, and reputation. By
18 permitting Herbalife products to be distributed exclusively through by Distributors,
19 Herbalife ensures that its customers receive personal attention, accurate
20 information about Herbalife products, and guidance for safe and proper use of
21 Herbalife products. Distributors also give customers personal encouragement that
22 helps customers follow their nutritional programs and achieve their nutritional or
23 weight-loss goals. Distributors are also responsible for preserving the integrity of
24 Herbalife products through proper storage and other measures designed to ensure
25 that customers receive fresh and undamaged products. In the highly competitive
26 nutrition market, quality is a fundamental part of the consumer's decision to
27 purchase a product.
28

1 13. To promote and protect the Herbalife brand, Herbalife International
2 has registered numerous trademarks with the United States Patent and Trademark
3 Office. These trademarks include, but are not limited to, HERBALIFE® (U.S.
4 Trademark Registration Nos. 4,402,483, 3,324,677, 2,512,368, 1,969,346,
5 1,811,780, 1,254,211), HERBALIFE24® (U.S. Trademark Registration No.
6 4,647,525), HERBALIFELINE® (U.S. Trademark Registration No. 1,406,425),
7 CELL ACTIVATOR® (U.S. Trademark Registration No. 3,116,689), TRI-
8 SHIELD® (U.S. Trademark Registration No. 3,137,237), XTRA-CAL® (U.S.
9 Trademark Registration No. 3,739,538), PROLESSA® (U.S. Trademark
10 Registration No. 4,301,688), THERMOBOND® (U.S. Trademark Registration No.
11 1,934,165), and TOTAL CONTROL® (U.S. Trademark Registration No.
12 2,832,678) (collectively, the “Herbalife Registered Trademarks”).

13 14. Herbalife International owns the Herbalife Registered Trademarks and
14 has licensed them to Herbalife. Through an agreement with Herbalife
15 International, Herbalife also has the right to enforce and collect past and future
16 damages for the infringement of the Herbalife Registered Trademarks throughout
17 the United States.

18 15. The registration for each of the Herbalife Registered Trademarks is
19 valid, subsisting, and in full force and effect. Pursuant to 15 U.S.C. § 1065, the
20 Herbalife Registered Trademarks serve as conclusive evidence of Herbalife
21 International’s ownership of the marks and Plaintiffs’ exclusive right to use and
22 direct the use of the marks in commerce and in connection with the sale and
23 distribution of the Herbalife products identified in the registrations. *See* 15 U.S.C.
24 § 1115(b).

25 16. Herbalife actively uses, advertises, and markets all of the Herbalife
26 Registered Trademarks in commerce throughout the United States.

1 17. Due to the superior quality and exclusive distribution of Herbalife
2 products, and because Herbalife is recognized as th source of high quality
3 products, the Herbalife Registered Trademarks have substantial value.

4
5 **Plaintiffs Exercise Strict Quality Controls Over the Production and**
6 **Distribution of Herbalife Products and Provide a Guarantee for Products**
7 **Purchased From Distributors**

8 18. To maintain quality controls over Herbalife products, Herbalife allows
9 Herbalife products to be sold in the United States only by itself or by Herbalife
10 Distributors. Herbalife’s ability to maintain quality controls is essential to the
11 integrity and safety of Herbalife products, as well as to the value of the Herbalife
12 Registered Trademarks.

13 19. By contract, Distributors are authorized to sell Herbalife products only
14 in certain channels. Distributors are also required by contract to follow Herbalife’s
15 sales practices, policies, and Rules of Conduct (collectively, the “Herbalife
16 Rules”), which require Distributors to take various actions and exercise various
17 quality controls. Herbalife enforces the quality controls established in its Rules.

18 20. The Herbalife Rules emphasize the importance of an interpersonal
19 relationship between customers and Distributors and require that a Distributor be
20 assigned to each customer that purchases Herbalife products. When selling or
21 providing samples of Herbalife products, Distributors are required to provide
22 directions for the safe and proper use of the products. In order to further ensure the
23 safety of its customers, Herbalife also instructs Distributors to recommend that
24 customers with medical conditions or who are under medical treatment seek the
25 advice of a physician before changing their diet. The Herbalife Rules strictly
26 prohibit Distributors from providing false or misleading information in connection
27 with the distribution of Herbalife products.

1 21. To ensure that customers receive products of the quality that they
2 have come to expect from Herbalife, Distributors are prohibited from altering any
3 Herbalife product, label, or accompanying literature. Distributors are also required
4 to follow handling and storage instructions for each Herbalife product.

5 22. After completion of a sale, the Herbalife Rules require Distributors to
6 provide their customers with retail order forms listing the product sold, as well as
7 the Distributor's name and contact information. The Herbalife Rules also require
8 Distributors to retain copies of all retail receipts for two years following a
9 customer's purchase. These requirements facilitate communication between the
10 customer and the Distributor with respect to any questions the customer has about
11 the Herbalife product that he or she purchased and enables contact between the
12 customer and the Distributor relating to consumer safety issues, including product
13 recalls.

14 23. Herbalife also provides customers who purchase Herbalife products
15 through authorized chains of distribution with a Satisfaction Guarantee, which
16 allows a customer who is dissatisfied with an Herbalife product to receive a refund
17 of the purchase price within 30 days after receipt of the product (the "Satisfaction
18 Guarantee"). Each Herbalife Distributor is required to honor the Satisfaction
19 Guarantee for customers who purchased their Herbalife products from that
20 Distributor.

21 24. Because Herbalife cannot ensure the quality of products purchased
22 outside of authorized chains of distribution, the Satisfaction Guarantee does not
23 apply to products that are purchased from unauthorized sellers, such as non-
24 Distributors.

25 25. To maintain the quality of its products, Herbalife also prohibits the
26 sale of Herbalife products over the Internet, other than through a designated
27 GoHerbalife platform. This prohibition ensures that customers always receive
28 products that are shipped directly from Herbalife or an Herbalife Distributor.

1 Herbalife's prohibition on sales over the Internet includes sales on auction websites
2 such as eBay or www.amazon.com ("Amazon").

3 26. The Herbalife Rules also prohibit Distributors from selling or
4 providing Herbalife products to non-Distributors who resell or intend to resell the
5 products.

6 **Defendants' Illegal Sale of Herbalife Products**

7 27. On or about April 30, 2002, McGarity entered into a membership
8 agreement ("Distributor Agreement") with Herbalife whereby she agreed, among
9 other things, to abide by the Herbalife Rules in exchange for authorization to sell
10 Herbalife products. McGarity's Herbalife Distributorship was terminated on May
11 5, 2008 for non-renewal.

12 28. Since that time McGarity has not been an Herbalife Distributor, and
13 has thus not been authorized to sell Herbalife products.

14 29. Upon information and belief, sometime during or prior to January
15 2016, one or more of the Defendants began selling products bearing the Herbalife
16 Registered Trademarks through a storefront on eBay called "mikenalyson27."
17 Herbalife discovered these sales in the course of policing the Internet for listings of
18 Herbalife products.

19 30. On January 27, 2016, Herbalife—through counsel—sent a cease-and-
20 desist letter through eBay's messaging system to the "mikenalyson27" storefront
21 demanding that the storefront cease selling Herbalife products. Herbalife did not
22 receive any response, and Herbalife products were not removed from the
23 "mikenalyson27" storefront.

24 31. To obtain information regarding the individual(s) and entity(ies)
25 operating the "mikenalyson27" storefront, Herbalife coordinated the purchase of a
26 product from the storefront in February 2016.

27 32. Based on the return address listed on the package used to ship the
28 product purchased from the "mikenalyson27" storefront, as well as payment

1 information obtained through the transaction and additional investigation,
2 Herbalife identified McGarity as an operator of the “mikenalyson27” storefront.

3 33. On February 10, 2016, Herbalife sent another cease-and-desist letter
4 to McGarity—this time to her home address. Once again, Herbalife did not receive
5 any response to its letter.

6 34. As of the time of filing, Defendants continue to sell substantial
7 amounts of Herbalife products through their “mikenalyson27” storefront.

8 **Defendants’ Illegal Sale of Herbalife Products**

9 35. Defendants, without authorization from Plaintiffs have sold—and are
10 selling—products bearing the Herbalife Registered Trademarks through various
11 channels, including on eBay. On information and belief, Defendants are also
12 selling Herbalife products through other channels.

13 36. The Herbalife products Defendants are selling are not genuine
14 Herbalife products because, among other reasons, they are ineligible for the
15 Satisfaction Guarantee and are not subject to and do not abide by Herbalife’s
16 quality control procedures that Distributors must follow.

17 37. As a result, through their unauthorized use of the Herbalife Registered
18 Trademarks, Defendants have misled—and continue to mislead—consumers into
19 believing they are purchasing products with the same customer benefits and quality
20 controls as genuine Herbalife products. In reality, however, the products sold by
21 Defendants are materially different from genuine and authentic Herbalife products.

22 **Defendants are Tortiously Interfering with**

23 **Herbalife’s Agreements With Its Distributors**

24 38. Upon information and belief, Defendants have purchased Herbalife
25 products from Herbalife Distributors for the purpose of reselling them on the
26 Internet.

27 39. Defendants knew that Herbalife’s agreements with its Distributors
28 prohibit the sale of Herbalife products to non-Distributors for the purpose of resale,

1 as well as to individuals or entities Distributors know, or have reason to know,
2 intend to resell the products.

3 40. Defendants knew this, among other reasons, because Herbalife
4 informed McGarity in cease-and-desist letters dated January 27, 2016, and
5 February 10, 2016, that its contracts with Distributors prohibit Distributors from
6 selling Herbalife products to customers who intend to resell the products.
7 McGarity also separately knew of this prohibition because she herself was an
8 Herbalife Distributor before her Distributorship was terminated in 2008.

9 41. Upon information and belief, Defendants willfully and knowingly
10 induced unknown Herbalife Distributors to breach their agreements with Herbalife
11 so that Defendants could acquire Herbalife products and resell them for profit.

12 **Plaintiffs Have Suffered Substantial Harm**

13 **As A Result of Defendants' Conduct**

14 42. As a proximate result of Defendants' actions, Plaintiffs have suffered,
15 and will continue to suffer, irreparable harm to their quality control procedures, to
16 the Herbalife Registered Trademarks, and to the goodwill associated with the
17 Herbalife brand.

18 43. Defendants' conduct is knowing, intentional, willful, malicious,
19 wanton, and contrary to law.

20 44. Plaintiffs are entitled to injunctive relief because Defendants will
21 otherwise continue to sell products bearing the Herbalife Registered Trademarks
22 that are materially different from Herbalife products sold by Distributors and do
23 not abide by Herbalife's quality controls. Defendants' ongoing illegal conduct has
24 caused and will continue to cause irreparable harm to Plaintiffs' goodwill; and has
25 caused and will continue to cause irreparable harm to the goodwill associated with
26 the Herbalife brand and significant consumer confusion.

1 45. In the last year, from June 16, 2017 through June 16, 2018, Plaintiffs
2 sold over \$132,000 of infringing Herbalife products on eBay through the
3 “mikenalyson27” storefront.

4 **FIRST CAUSE OF ACTION**

5 **Trademark Infringement**

6 **15 U.S.C. § 1114**

7 46. Plaintiffs re-allege and incorporate the allegations set forth in the
8 foregoing paragraphs as if fully set forth herein.

9 47. Plaintiffs are the owner and licensee of the Herbalife Registered
10 Trademarks.

11 48. Plaintiffs have registered the Herbalife Registered Trademarks with
12 the United States Patent and Trademark Office.

13 49. The Herbalife Registered Trademarks are valid and subsisting
14 trademarks in full force and effect.

15 50. Defendants willfully and knowingly used, and continue to use, the
16 Herbalife Registered Trademarks in commerce for the purpose of selling products
17 on the Internet without Plaintiffs’ consent.

18 51. The products Defendants sell bearing the Herbalife Registered
19 Trademarks are not authorized for sale by Plaintiffs.

20 52. Defendants’ use of the Herbalife Registered Trademarks in connection
21 with their unauthorized sale of products is likely to cause confusion, cause mistake,
22 or deceive consumers because it suggests that the products offered for sale by
23 Defendants are the same as products legitimately bearing the Herbalife Registered
24 Trademarks, and originate from, or are sponsored by, authorized by, or otherwise
25 connected with Plaintiffs.

26 53. Defendants’ use of the Herbalife Registered Trademarks in connection
27 with their sale of Herbalife products is likely to cause confusion, cause mistake, or
28

1 deceive because it suggests that the products Defendants offer for sale are genuine
2 and authentic Herbalife products.

3 54. The products sold by Defendants are not, in fact, genuine and
4 authentic Herbalife brand products. The products sold by Defendants are
5 materially different because, among other reasons, they are ineligible for the
6 Satisfaction Guarantee and are not subject to and do not abide by Herbalife's
7 quality control procedures that Distributors must follow.

8 55. Defendants' unauthorized use of the Herbalife Registered Trademarks
9 has materially damaged the value of the Herbalife Registered Trademarks, caused
10 significant damage to Plaintiffs' business relations, and infringed on the Herbalife
11 Registered Trademarks.

12 56. As a proximate result of Defendants' actions, Plaintiffs have suffered,
13 and will continue to suffer, great damage to their business, goodwill, reputation,
14 and profits in an amount to be proven at trial.

15 57. Plaintiffs are entitled to recover their damages caused by Defendants'
16 infringement of the Herbalife Registered Trademarks and disgorge Defendants'
17 profits from their willfully infringing sales and unjust enrichment.

18 58. Plaintiffs are entitled to injunctive relief under 15 U.S.C. § 1116
19 because they have no adequate remedy at law for Defendants' infringement and,
20 unless Defendants are permanently enjoined, Plaintiffs will suffer irreparable harm.

21 59. Plaintiffs are entitled to enhanced damages and attorneys' fees under
22 15 U.S.C. § 1117(a) because Defendants willfully, intentionally, maliciously, and
23 in bad faith infringed on the Herbalife Registered Trademarks.

24 **SECOND CAUSE OF ACTION**

25 **False Advertising**

26 **15 U.S.C. § 1125(a)(1)(B)**

27 60. Plaintiffs re-allege and incorporate the allegations set forth in the
28 foregoing paragraphs as if fully set forth herein.

1 61. Plaintiffs are the owner and licensee of the Herbalife Registered
2 Trademarks.

3 62. Plaintiffs have registered the Herbalife Registered Trademarks with
4 the United States Patent and Trademark Office.

5 63. The Herbalife Registered Trademarks are valid and subsisting
6 trademarks in full force and effect.

7 64. Defendants willfully and knowingly used, and continue to use, the
8 Herbalife Registered Trademarks in interstate commerce, including through their
9 product listings on eBay, for the purpose of advertising, promoting, and selling
10 products bearing the Herbalife Registered Trademarks without the consent of
11 Herbalife.

12 65. Defendants' advertisements and promotions of their products
13 unlawfully using the Herbalife Registered Trademarks have been disseminated to
14 the relevant purchasing public.

15 66. Defendants' use of the Herbalife Registered Trademarks in connection
16 with the unauthorized sale and advertising of products is likely to cause confusion,
17 cause mistake, or deceive because it falsely suggests that the products offered for
18 sale by Defendants are genuine and authentic products, and originate from, or are
19 sponsored by, authorized by, or otherwise connected with Herbalife when they are
20 not.

21 67. Defendants' unauthorized and deceptive use of the Herbalife
22 Registered Trademarks in their eBay listings is material and likely to influence
23 customers to purchase the product.

24 68. Defendants' unauthorized use of the Herbalife Registered Trademarks
25 in advertising, and otherwise, infringes on the Herbalife Registered Trademarks.

26 69. As a proximate result of Defendants' actions, Plaintiffs have suffered,
27 and will continue to suffer, great damage to their business, goodwill, reputation,
28 and profits in an amount to be proven at trial.

1 70. Plaintiffs are entitled to recover their damages caused by Defendants'
2 infringement of the Herbalife Registered Trademarks and disgorge Defendants'
3 profits from their willfully infringing sales and unjust enrichment.

4 71. Plaintiffs are entitled to injunctive relief under 15 U.S.C. § 1116
5 because they have no adequate remedy at law for Defendants' actions and, unless
6 Defendants are permanently enjoined, Plaintiffs will suffer irreparable harm.

7 72. Plaintiffs are entitled to enhanced damages and attorneys' fees under
8 15 U.S.C. § 1117(a).

9 **THIRD CAUSE OF ACTION**

10 **Unfair Competition**

11 **15 U.S.C. § 1125(a)**

12 73. Plaintiffs re-allege and incorporate the allegations set forth in the
13 foregoing paragraphs as if fully set forth herein.

14 74. Plaintiffs are the owner and licensee of the Herbalife Registered
15 Trademarks.

16 75. Plaintiffs have registered the Herbalife Registered Trademarks with
17 the United States Patent and Trademark Office.

18 76. The Herbalife Registered Trademarks are valid and subsisting
19 trademarks in full force and effect.

20 77. Defendants willfully and knowingly used, and continue to use, the
21 Herbalife Registered Trademarks in commerce for the purpose of selling Herbalife
22 products on the Internet without Plaintiffs' consent.

23 78. The products Defendants sell bearing the Herbalife Registered
24 Trademarks are not authorized for sale by Plaintiffs.

25 79. Defendants' use of the Herbalife Registered Trademarks in connection
26 with their unauthorized sale of products is likely to cause confusion, cause mistake,
27 or deceive consumers because it suggests that the products offered for sale by
28 Defendants are the same as products legitimately bearing the Herbalife Registered

1 Trademarks, and originate from, or are sponsored by, authorized by, or otherwise
2 connected with Plaintiffs when they are not.

3 80. Defendants' use of the Herbalife Registered Trademarks in connection
4 with their sale of Herbalife products is likely to cause confusion, cause mistake, or
5 deceive because it suggests that the products Defendants offer for sale are genuine
6 and authentic Herbalife products when they are not.

7 81. Defendants' unauthorized sale of products bearing the Herbalife
8 Registered Trademarks and unauthorized use of the Herbalife Registered
9 Trademarks in advertising infringes on the Herbalife Registered Trademarks.

10 82. Defendants' unauthorized sale of products bearing the Herbalife
11 Registered Trademarks and unauthorized use of the Herbalife Registered
12 Trademarks in advertising has materially damaged the value of the Herbalife
13 Registered Trademarks and has caused significant damages to Plaintiffs' business
14 relations.

15 83. As a proximate result of Defendants' actions, Plaintiffs have suffered,
16 and will continue to suffer, great damage to their business, goodwill, reputation,
17 and profits in an amount to be proven at trial.

18 84. Plaintiffs are entitled to recover their damages caused by Defendants'
19 infringement of the Herbalife Registered Trademarks and disgorge Defendants'
20 profits from their willfully infringing sales and unjust enrichment.

21 85. Plaintiffs are entitled to injunctive relief under 15 U.S.C. § 1116
22 because they have no adequate remedy at law for Defendants' actions and, unless
23 Defendants are permanently enjoined, Plaintiffs will suffer irreparable harm.

24 86. Plaintiffs are entitled to enhanced damages and attorneys' fees under
25 15 U.S.C. § 1117(a).

FOURTH CAUSE OF ACTION

Trademark Dilution

15 U.S.C. § 1125(c)

1 87. Plaintiffs re-allege and incorporate the allegations set forth in the
2 foregoing paragraphs as if fully set forth herein.

3 88. The Herbalife Registered Trademarks are valid and subsisting
4 trademarks in full force and effect.

5 89. Herbalife International is the owner of the HERBALIFE® trademark
6 and has licensed the trademark to Herbalife. Herbalife has expended substantial
7 time, effort, money, and resources advertising and promoting products and services
8 under the HERBALIFE® trademark. As such, the HERBALIFE® trademark is
9 the means by which Herbalife products and services are distinguished from others
10 in the marketplace.

11 90. The HERBALIFE® trademark is inherently distinctive, and as a result
12 of Herbalife's long, continuous, and exclusive use of the HERBALIFE®
13 trademark, it has acquired a secondary meaning associated by purchasers and the
14 public with Herbalife's products and services.

15 91. Herbalife is widely recognized as the designated source of goods
16 bearing the HERBALIFE® trademark.

17 92. After the HERBALIFE® trademark became famous, Defendants
18 willfully used the HERBALIFE® trademark in connection with the unauthorized
19 and illegal sale of products. Because the products sold by Defendants are not, in
20 fact, genuine and authentic Herbalife products, Defendants' sales have and will
21 continue to cause dilution of the distinctive quality of the HERBALIFE®
22 trademark by lessening the public's ability to identify and distinguish genuine
23 Herbalife products.

24 93. Defendants' unlawful actions have harmed the reputation and
25 goodwill associated with the HERBALIFE® trademark, and Herbalife has suffered
26 and will continue to suffer immediate and irreparable injury. Further, Defendants'
27 actions have harmed and will continue to harm consumers interested in purchasing
28 genuine Herbalife products.

1 94. As a proximate result of Defendants' actions, Plaintiffs have suffered,
2 and will continue to suffer, great damage to their business, goodwill, reputation,
3 and profits in an amount to be proven at trial.

4 95. Plaintiffs are entitled to injunctive relief under 15 U.S.C. § 1116
5 because they have no adequate remedy at law for Defendants' actions and, unless
6 Defendants are permanently enjoined, Plaintiffs will suffer irreparable harm.

7 96. Plaintiffs are entitled to enhanced damages and attorneys' fees under
8 15 U.S.C. § 1117(a).

9 **FIFTH CAUSE OF ACTION**

10 **Common Law Trademark Infringement**

11 97. Plaintiffs re-allege and incorporate the allegations set forth in the
12 foregoing paragraphs as if fully set forth herein.

13 98. This claim arises under the common law of the State of California.

14 99. Plaintiffs are the owner and licensee of the Herbalife Registered
15 Trademarks.

16 100. Plaintiffs have registered the Herbalife Registered Trademarks with
17 the United States Patent and Trademark Office.

18 101. The Herbalife Registered Trademarks are valid and subsisting
19 trademarks in full force and effect.

20 102. Defendants willfully and knowingly used, and continue to use, the
21 Herbalife Registered Trademarks in commerce for the purpose of selling products
22 on the Internet without Plaintiffs' consent.

23 103. The products Defendants sell bearing the Herbalife Registered
24 Trademarks are not authorized for sale by Plaintiffs.

25 104. Defendants' use of the Herbalife Registered Trademarks in connection
26 with their unauthorized sale of products is likely to cause confusion, cause mistake,
27 or deceive consumers because it suggests that the products offered for sale by
28 Defendants are the same as products legitimately bearing the Herbalife Registered

1 Trademarks, and originate from, or are sponsored by, authorized by, or otherwise
2 connected with Plaintiffs.

3 105. Defendants' use of the Herbalife Registered Trademarks in connection
4 with their sale of Herbalife products is likely to cause confusion, cause mistake, or
5 deceive because it suggests that the products Defendants offer for sale are genuine
6 and authentic Herbalife products.

7 106. The products sold by Defendants are not, in fact, genuine and
8 authentic Herbalife brand products. The products sold by Defendants are
9 materially different because, among other reasons, they are ineligible for the
10 Satisfaction Guarantee and are not subject to and do not abide by Herbalife's
11 quality control procedures that Distributors must follow.

12 107. Defendants' unauthorized use of the Herbalife Registered Trademarks
13 has materially damaged the value of the Herbalife Registered Trademarks, caused
14 significant damage to Plaintiffs' business relations, and infringed on the Herbalife
15 Registered Trademarks.

16 108. As a proximate result of Defendants' actions, Plaintiffs have suffered,
17 and will continue to suffer, great damage to their business, goodwill, reputation,
18 and profits in an amount to be proven at trial.

19 109. Plaintiffs are entitled to recover their damages caused by Defendants'
20 infringement of the Herbalife Registered Trademarks and disgorge Defendants'
21 profits from their willfully infringing sales and unjust enrichment.

22 110. In harming Plaintiffs, Defendants have acted with willful misconduct
23 and actual malice. Accordingly, Plaintiffs are entitled to an award of punitive
24 damages.
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1 **SIXTH CAUSE OF ACTION**

2 **Unfair Competition in Violation of Business and Professions Code § 17200,**
3 ***et seq.***

4 111. Plaintiffs re-allege and incorporate the allegations set forth in the
5 foregoing paragraphs as if fully set forth herein.

6 112. This claim arises under the laws of the State of California.

7 113. Defendants' obtaining of Herbalife products through unlawful means
8 and subsequent distribution or sale of the products constitutes an unfair and/or
9 fraudulent business practice, as described in California Business and Professions
10 Code § 17200 *et seq.* as these actions are likely to deceive and mislead the public.

11 114. Defendants' acts of unfair competition have caused and will continue
12 to cause Plaintiffs irreparable harm. Plaintiffs have no adequate remedy at law
13 against Defendants' unfair competition.

14 115. Plaintiffs are entitled to judgment enjoining and restraining
15 Defendants from engaging in further acts of infringement and unfair competition.

16 **SEVENTH CAUSE OF ACTION**

17 **Tortious Interference with Contracts and Business Relationships**

18 116. Plaintiffs re-allege and incorporate the allegations set forth in the
19 foregoing paragraphs as if fully set forth herein.

20 117. This claim arises under the laws of the State of California.

21 118. Herbalife has contracts and business relationships with its
22 Distributors, who have a contractual right to sell Herbalife products in accordance
23 with the Herbalife Rules.

24 119. Herbalife's contracts with its Distributors prohibit Distributors from
25 selling or providing Herbalife products to non-Distributors who intend to resell
26 them.

27 120. Defendants had knowledge of Herbalife's contracts and business
28 relationships with its Distributors. Specifically, McGarity is a former Herbalife

1 Distributor who is familiar with Herbalife's contractual restrictions, including the
2 prohibitions against sales to resellers. Additionally, Herbalife informed McGarity,
3 via cease-and-desist letters sent by counsel on January 27, 2016, and February 10,
4 2016, that Herbalife's contracts with its Distributors prohibit the sale of Herbalife
5 products to individuals, such as McGarity, that intend to resell the products outside
6 of Plaintiffs' authorized channels of distribution.

7 121. Defendants intentionally interfered with the contracts and business
8 relationships between Herbalife and its Distributors by purchasing products from
9 Distributors for the purpose of reselling the products on the Internet without
10 Plaintiffs' permission.

11 122. By encouraging and providing the means by which Distributors may
12 conduct unauthorized sales of Herbalife products on the Internet, Defendants have
13 solicited and directly caused the breach of Herbalife's contracts with its
14 Distributors.

15 123. Defendants have no legal right, privilege or justification for their
16 conduct.

17 124. As a direct and proximate result of Defendants' intentional
18 interference with Herbalife's contracts, Plaintiffs have suffered, and will continue
19 to suffer, monetary damages and irreparable injury.

20 125. Defendants' acts were willful, malicious, oppressive, and undertaken
21 with the conscious intent to deprive Plaintiffs of their rights and property, thereby
22 entitling Plaintiffs to exemplary damages in addition to all other damages sustained
23 thereby.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs prays for relief and judgment as follows:

26 A. Judgment in favor of Plaintiffs and against Defendants in an amount
27 to be determined at trial, but in excess of \$550,000, including, but not limited to,
28 compensatory damages, statutory damages, treble damages, restitution,

1 disgorgement of profits, punitive damages, and pre-judgment and post-judgment
2 interest, as permitted by law;

3 B. A permanent injunction enjoining Defendants and any employees,
4 agents, servants, officers, representatives, directors, attorneys, successors,
5 affiliates, assigns, any and all other entities owned or controlled by Defendants and
6 all of those in active concert and participation with Defendants (the “Enjoined
7 Parties”) as follows:

- 8 i) Prohibiting the Enjoined Parties from advertising or selling, via
9 the Internet or otherwise, all Herbalife products,
- 10 ii) Prohibiting the Enjoined Parties from using any of the Herbalife
11 Registered Trademarks in any manner, including advertising on
12 the Internet,
- 13 iii) Prohibiting the Enjoined Parties from importing, exporting,
14 manufacturing, producing, distributing, circulating, selling,
15 offering to sell, advertising, promoting, or displaying any and
16 all Herbalife products as well as any products bearing any of
17 the Herbalife Registered Trademarks,
- 18 iv) Prohibiting the Enjoined Parties from disposing of, destroying,
19 altering, moving, removing, concealing, or tampering with any
20 records related to any products sold by them which contain the
21 Herbalife Registered Trademarks including: invoices,
22 correspondence with vendors and distributors, bank records,
23 account books, financial statements, purchase contracts, sales
24 receipts, and any other records that would reflect the source of
25 the products that Defendants have sold bearing these
26 trademarks,
- 27 v) Requiring the Enjoined Parties to take all action to remove from
28 the Enjoined Parties’ websites or storefronts any reference to

any of Herbalife's products, or any of the Herbalife Registered Trademarks,

vi) Requiring the Enjoined Parties to take all action, including but not limited to, requesting Internet search engines (such as Google, Yahoo!, and Bing) to remove from the Internet any of the Herbalife Registered Trademarks which associate Herbalife's products or the Herbalife Registered Trademarks with the Enjoined Parties or the Enjoined Parties' websites or storefronts,

vii) Requiring the Enjoined Parties to take all action to remove the Herbalife Registered Trademarks from the Internet, including from the website www.ebay.com;

C. An award of attorneys' fees, costs, and expenses; and

D. Such other and further relief as the Court deems just, equitable and proper.

Dated: June 19, 2018

Respectfully submitted,

By: /s/ Joe Tuffaha

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***Attorneys for Plaintiffs Herbalife
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Herbalife International, Inc.***

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs
demand a trial by jury of all issues so triable.

Dated: June 19, 2018

Respectfully submitted,

By: /s/ Joe Tuffaha

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